IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Special Leave to Appeal to the Supreme Court upon an Order of the Provincial High Court under and in terms of Section 31DD(1) of the Industrial Disputes Act No. 43 of 1950 (as amended).

Buwalu Patabandige Thilakasiri,
Kulunu Kanda,
Unawatuna.

Applicant

SC Appeal No. 76/2022
SC SPL LA No. 65/2021
HC Case No.
SP/G/HC/LT/Appeal/1137/2016
LT Case No. LT4/G/66/2012

Vs.

1. Fazal Hardware Pvt Ltd,
   No. 39/41, Pettigalawatta,
   Galle.

2. Fazal Import & Transport Pvt Ltd,
   No. 29, Matara Road,
   Galle.

Respondents

AND BETWEEN

1. Fazal Hardware Pvt Ltd,
   No. 39/41, Pettigalawatta,
   Galle.

2. Fazal Import & Transport Pvt Ltd,
   No. 29, Matara Road,
   Galle.

Respondent-Appellants

Vs.

Buwalu Patabandige Thilakasiri,
Kulunu Kanda,
Unawatuna.

Applicant-Respondent

AND NOW BETWEEN

1. Fazal Hardware Pvt Ltd,
   No. 39/41, Pettigalawatta,
   Galle.

2. Fazal Import & Transport Pvt Ltd,
   No. 29, Matara Road,
   Galle.

Respondent-Appellant-Petitioners

Buwalu Patabandige Thilakasiri,
Kulunu Kanda,
Unawatuna.

Applicant-Respondent-Respondent

Before: **Justice Yasantha Kodagoda, PC**
Justice A.L. Shiran Gooneratne
Justice K. Priyantha Fernando

Counsel: Sarath Vidanapathirana with N.S. Welgama for the **1st and 2nd Respondent-Appellant-Appeallants.**

Thushani Machado for the **Respondent.**

Argued on: 10/10/2024

Decided on: 18/02/2025

A.L. Shiran Gooneratne J.

[1] The Applicant-Respondent-Respondent, (hereinafter sometimes referred to as the Applicant-Respondent) preferred an application dated 21/09/2012 to the Labour Tribunal Galle, stating *inter alia*, that his employment as a heavy-duty driver with the Respondent-Appellant-Appellants, (hereinafter sometimes referred to as the Respondent-Appellant) was unjustly terminated with effect from 03/09/2012. The Applicant sought reinstatement with back wages, payment of his statutory entitlements and compensation arising from unjust termination of services.

[2] By answer dated 23/10/2012, the Appellant denied termination of service of the Respondent. It further said that the Applicant, no longer having any intention to carry out his services as an employee, used vituperative language on one of the directors and left the place of employment on his own volition.

[3] At the conclusion of the Inquiry, the learned President of the Labour Tribunal by Order dated 09/09/2016, held with the Applicant and directed that the Respondent should pay 3 years back wages for the financial loss caused to the Applicant.

[4] Being aggrieved by the said Order, the Respondent by Petition of Appeal dated 11/10/2016, appealed to the High Court of the Southern Province holden in Galle ("the High Court"). The High Court, by Judgment dated 03/03/2021 affirmed the said Order of the learned President of the Labour Tribunal dated 09/09/2016 and dismissed the appeal with costs.

[5] The Respondent-Appellant, by Petition dated 02/10/2020 is before this Court, to set aside the said Judgment dated 03/03/2021, delivered by the High Court.

[6] By Order dated 04/08/2022, this Court granted leave to appeal on the following questions of law;

I. Has the Learned High Court Judge of the Provincial High Court of the Southern Province holden at Galle failed to appreciate and consider the fact that the Learned President of Labour Tribunal has admitted and accepted and acted upon the false testimony of the aforesaid Ayurvedic Physician Walawage in the light of the fact that the said witness himself has admitted that he falsified his record for the purpose of issuing the medical certificate marked 'A1'

II. While the answer of the Respondents reveal; that the Applicant scolded and used vituperative language on one of the directors of the employer company and further cross examining the Applicant on the above basis the learned President of the Labour Tribunal held that the said position of the Respondent was a new position created by the Respondents subsequent to the Applicant closed his case being an error of law has not been appreciated

by the learned High Court Judge

III. Did the Learned High Court Judge fail to appreciate that the order of the Labour Tribunal was not just and equitable.

[7] The Applicants evidence before the Labour Tribunal was limited to that of the Applicant and of an Ayurvedic Physician who examined the mother of the Applicant for a shoulder ailment on 03/09/2021.

[8] The position of the Applicant is that on the day in question, i.e. 03/09/2012, the Respondent had requested that he undertakes a long-distance delivery of goods. Since his mother was indisposed due to a fracture in her shoulder, he was compelled to keep away from his duties in order to attend to his mother's medical needs. However, the Respondent had insisted that he carried on with the assigned task, or no longer have his employment with the Respondent-Appellant.

[9] The Applicant claimed that, subsequent to this incident, successive attempts to report for duty was thwarted by the Respondent and he was finally informed that his services were no longer required.

[10] In order to establish his mother's indisposition, the Applicant submitted a medical certificate issued by an Ayurvedic Physician marked 'X4' which certified that the Applicants mother was treated for a left shoulder fracture from "1st September 2012 to 3 months' time" (produced verbatim), and the register of patients for the relevant period marked 'X7'.

[11] The Applicant claimed that the prescribed period by the Ayurvedic Physician was a course of treatment to be taken every other day commencing from 1st September 2012.

[12] It is the position of the Appellant that the entry of the Applicants mother's name on 01/09/2012, is a falsification of the register of patients. The Appellant points

out that the penultimate entry in the page of the register of patients was made on 27/08/2012 whilst the very first entry on the next page of the register is 30/08/2012. Therein it is submitted that, in order to justify the claim of the Applicant, the Applicants mother's name was entered making use of the blank space below the last line. This position had been admitted by the Ayurvedic Physician in his evidence before the Tribunal.

[13] In his testimony, the Ayurvedic Physician clearly states that he did not recall the exact date on which the Applicant's mother was seen by him and that upon the Applicant's request, an entry was inserted to the medical registry and a medical certificate was issued.

[14] The reason for the Applicants refusal to engage in the long-distance work assignment was that his mother had to be taken to the Ayurvedic Physician every other day of the week and accordingly, the Applicant was with his mother for treatment on 03/09/2012. It is observed that the Applicant has admitted in evidence that in the ensuing month, his mother had not visited the Ayurvedic Physician on any other day other than the 03/09/2012.

[15] It is submitted that the Labour Tribunal has failed to consider the said admission of falsification of the medical registry in its proper perspective which has created a substantial doubt as to whether the Applicant consulted the Ayurvedic Physician on 03/09/2012, therein, to strengthen his position in rejecting to engage in his work assignment and thereby to justify unjust termination of employment.

[16] In his testimony before the Tribunal, the Ayurvedic Physician has clearly admitted that he incorporated a false entry to the register of patients in order to tender it as evidence in this case:

ප්‍ර: එතකොට ඉතා පැහැදිලිවම ඔප්පු වෙනවා මේ නඩුවේ සාක්ෂි සඳහා ඉදිරිපත් කිරීමට යොදන ලද ව්‍යාජ සටහනක් කියලා?

උ: පිළිගන්නවා මේ සටහනේ ලියල තියෙන්නේ මේ පුද්ගලයා ඇවිල්ලා පළවෙනිදා ඉඳලා මවට ප්‍රතිකාර ගත්ත බවට මගෙන් ලිපියක් ඉල්ලුවා. මම බැලුවා පළවෙනිදා ඉඳලා සටහනක් කරලා තියෙනවද කියලා නැහැ. වෛද්‍ය සහතිකය පළවෙනිදා ඉඳලා අවශ්‍ය නිසා මම ලියා ගත්තා. ඒ වෙලාවේ ලියලා නැහැ. ප්‍රතිකාර කරපු නිසා මම සටහන් කළා මට හරියට මතකයක් නැති නිසා.

[17] In the above circumstances, the learned Counsel for the Appellant urged Court to disregard the evidence of the Ayurvedic Physician which creates a substantial doubt to his credibility and his testimonial trustworthiness.

[18] When evaluating evidence on falsification of the medical register, the Labour Tribunal concludes that trustworthiness of the evidence should not be challenged on the scheme of registration of patients but on the evaluation of evidence given by the Ayurvedic Physician in its totality. However, neither the Tribunal nor the High Court made any adverse finding on a clear admission in evidence by the Ayurvedic Physician of falsifying the medical register.

[19] It is also observed that the Labour Tribunal and the High Court failed to examine the said evidence relating to the falsification of the medical register which weighed strongly on the presumption that it could have been carried out for the Applicant to construct a case to justify unjust termination of employment.

[20] In the circumstances, I find reason to address the first and third questions of law, together.

Section 31C(1) of the Industrial Disputes Act provides that *"Where an application under section 31B is made to a Labour Tribunal, it shall be the duty of the tribunal to make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary, and thereafter make not later than six months from the date of such application, such order as may appear to the tribunal to* ***be just and equitable*** *" (emphasis added).*

[21] Equity, carries a fundamental maxim: *"He who seeks equity must come with clean hands."* This principle was established in the landmark case of ***Dering vs. Earl of Winchelsea***[1] and has since been consistently upheld as an integral principle of equitable relief. Therefore, a party seeking the intervention of a Tribunal or Court on equitable grounds must demonstrate honesty and integrity in their conduct.

[22] The said deliberate misrepresentation made by the Ayurvedic Physician clearly demonstrates to an admission of falsifying the medical register to place the Applicant at an advantage. Such action not only puts into question the testimonial trustworthiness of the witness but also the malicious intent to mislead the judicial process in arriving at a just and equitable order, which both lower courts th ought fit to ignore.

[23] When judges are vested with the power to adjudicate under the premise of equity and fairness, the decisions must be anchored in truth, good faith, and the law. The exercise of this discretion is not unfettered, it must operate within the framework of established legal principles and cannot be guided merely by sympathetic considerations. As held in ***Richard Pieris & Co. Ltd. vs. D.J. Wijesiriwardena***[2] , *"justice and equity can themselves be measured not according to the urgings of a kind heart, but only within the framework of the law."*

[24] As aptly stated in ***K. A. Munidasa Wattahena, Thalagaswala vs. Diya-kithulkanda Co-operative Thrift & Credit Society Ltd***[3]***,*** *"...this court does not endeavor to re-assess or re-evaluate any facts unless and otherwise the Appellant has satisfied the court that the learned President of the Labour Tribunal overlooked or reached conclusions which were against the weight of the evidence, or the conclusions reached were rationally impossible or perverse."*

[1] (1787) 1 Cox Eq Cas 318
[2] 62 NLR 233
[3] SC Appeal No. 143/15

[25] In the present case, the Appellant has sufficiently established that the Learned President of the Labour Tribunal failed to properly consider the falsified evidence presented by the Ayurvedic Physician and overlooked the clear admissions made during cross-examination.

[26] As held in ***Ashok Somalal Thakkar and Anr. vs. State Of Gujarat***[4] *"The doctrine falsus in uno, falsus in omnibus merely involves the question of weightage of evidence which a Court may apply in a given set of circumstances and not a mandatory rule of evidence, it has to apply in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of rule that it must be disregarded in all respects as well. But where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto."*

[27] The Applicants narration of events pertaining to 03/09/2012 centers around his inability to perform his duty as requested by the Respondent company, due to the urgent need of taking his mother for treatment. The evidence before this Court suggests that it was crucial for the Applicant to establish that his mother was taken for treatment on 01/09/2012. On the advice of the Ayurvedic Physician the treatment to continue every other day and 03/09/2012 was the next date the Applicant had to take her for treatment.

[28] As previously highlighted, the inconsistency in the patient registers when considered together with the Ayurvedic Physician's inability to recall whether the

[4] 2007CRILJ3579

Applicant's mother was actually treated on the 1st of September, undermines the credibility of the evidence. There is no reliable basis to establish that such treatment occurred on the said date. Therefore, it is clear that the Labour Tribunal failed to properly assess the medical register (X7) and the medical certificate (X4) in their proper perspective, instead placing undue reliance on the Physician's testimony, which was cluttered with falsehood.

For the foregoing reasons, I answer the first and third questions of law, in favor of the Appellant.

[29] The Respondent also claims that on the date in question, the Applicant behaved in an unruly manner using vituperative language against a director of the Appellant-company. It is submitted that the evidence relating to the use of such language was witnessed and testified to at the Tribunal by four employees of the Appellant-company, of which, at least three witnesses admittedly were within close proximity to the said incident. It is further contended that in the given circumstances, the use of such language by the Applicant would not have given him no other choice but to vacate his post.

[30] ***In Lanka Synthetic Fibre Co. Ltd vs. Perera*** [5]**,** the Court found that Perera, who was serving as an Assistant Security Officer, was found guilty of using abusive language and physically assaulting his superior officer, during a disagreement regarding the unauthorized removal of company property. This Court held that such actions constituted serious misconduct, including neglect of duty, and a breach of workplace discipline. It rejected the view of the High Court that the incident was minor and exaggerated and held that the use of abusive language towards a superior amount to a misconduct irrespective of the circumstances in which it has been uttered.

[5] 1998 3SLR 19

[31] In ***Wickramage Stanley Perera vs. National Police Commission and Others***[6], the Supreme Court clarified the legal definition and application of Vacation of Employment. The *"Court held that it requires two essential elements: a physical element and a mental element. The physical element refers to the employee's unauthorized absence from work, while the mental element refers to the intention to abandon employment. Both elements must co-exist for an employer to validly consider an employee to have vacated their post"*. The Court cited ***Nelson de Silva vs. Sri Lanka State Engineering Corporation*** (1996), and explained that physical absence alone is insufficient to establish vacation of employment; the employer must also prove the employee's intention to abandon their duties.

[32] Evidence given by three employees/ witnesses in support of the contention that the Applicant had used abusive language on the director of the Appellant-company corroborates with each other.

[33] In this instance, the Applicants use of abusive and vituperative language towards a director of the Appellant company within the bounds of his employment, goes beyond mere misconduct and reflects a deliberate intention to sever the employer-employee relationship. It is clear from the evidence that the Applicant has made an explicit declaration that he no longer wished to continue work with the Appellant company. During the argument with the director, the Applicant explicitly stated that he "did not want to work here anymore" and added that he "could find many other places to work for." This verbal admission is a clear and an unambiguous expression of his intention to sever the employer-employee relationship. Such a declaration made to a director, especially in the presence of fellow employees/ witnesses, cannot be considered as mere frustration or dissatisfaction. It is, rather a decisive indication of voluntary abandonment of employment. After making this declaration, he had slammed the vehicle key onto the table. These actions together,

[6] SC FR/APPLICATION NO. 403/2016

indicate a clear intention on the part of the employee to vacate his employment.

[34] As mentioned above in ***Lanka Synthetic Fibre Co. Ltd***, acts of insubordination and abusive language, towards superiors constitute grave misconduct warranting termination. However, in the present case, the Applicant went further by not only engaging in misconduct but also explicitly expressing his intention to leave and returning the key of the vehicle back to the company.

When viewed in totality, the Applicant voluntarily abandoned his employment. This was not a case of wrongful dismissal but one where the Applicant, through his own words and deeds, clearly expressed his intention to terminate the employment relationship.

[35] It is alleged by the Appellant, that the Labour Tribunal rejected the said evidence stating that, the Appellant had the opportunity to hear the evidence presented by the Applicant, and that it was a mere afterthought to change its defence to counter the claim placed by the Applicant.

[36] The Labour Tribunal was of the view that the Appellant had thereafter manufactured an entirely new defence and that the Applicant was not cross-examined on the new position adopted by the Appellant.

[37] On 'evidence necessary' and 'evidence tendered' W.E.M. Abeysekara, commented thus[7];

"Tendered evidence is subject to the rules of relevancy just as the requirement to record such is no bar to the adjudicator calling in addition any necessary evidence. The distinction between the two classes being subtle, in actual practice it becomes difficult to firmly decide, from such of evidence that is tendered is necessary under the principles of natural justice which are a sine-qua-non for a just and equitable

[7] WEM Abeysekara, *Industrial Law and Adjudication with Emphasis on the Industrial Disputes Act*, vol 1 (1970) 257.

award or order."

[38] In the answer tendered to the Labour Tribunal dated 23/10/2012, the Appellant had precisely adverted to the above position. It is also observed that at least in three separate instances the Appellant suggested this position to the Applicant in the proceedings before the Labour Tribunal.

[39] ප්‍ර: තමුන් ෆසාල් මහත්තයට ඉතාමත් අශෝභන අන්දමට රාජකාරිය ප්‍රතික්ෂේප කරලා ඒ මහතා කියන දේ නොවේ කරන්න කියා ඒ මහතාට බැණ වැදුනා කියා මා යෝජනා කරනවා?

ප්‍ර: ඒ අවස්ථාවේදී තමුන් ඉතාමත් අසීලාචාර විදිහට ෆසාල් මහත්තයාට බැන්නා කියා මා යෝජනා කරනවා?

ප්‍ර: සිද්ධිය වුණේ තමුන් ආයතනය දීපු ඒ නිත්‍යානුකූල නියෝග ප්‍රතික්ෂේප කළාට පසුව ෆසාල් මහත්තයා දුරකථනයෙන් යන්න කියා කිව්වහම ඒ මහතාට බැණ වැදී ඉන් පසුව තමුන් ඒ ආයතනයට වැඩට ගියේ නෑ කියා මා යෝජනා කරනවා?

[40] In the case, The ***Associated Newspapers of Ceylon Ltd. vs. National Employees' Union***[8], this Court addressed whether strict pleadings are necessary in proceedings before a Labour Tribunal. The Court held that statements filed by parties in Labour Tribunal applications are not equivalent to pleadings in a civil action and in determining what is "just and equitable" should be considered based on the circumstances of the case.

[41] Proceedings in Labour Tribunals are considered to be more flexible when compared with civil procedure, where pleadings strictly define the scope of the case. The President of the Labour Tribunal is therefore obligated to consider all relevant facts and evidence presented during the inquiry, even if such facts are not explicitly stated in the initial statements filed by the parties. In the above case the Court held that, the tribunal must look beyond the written statements to the totality

[8] 71 NLR 69

of the evidence and circumstances of the dispute.

[42] For the foregoing reasons, I answer the second question of law also in favor of the Appellant.

[43] Accordingly, the Appeal is allowed, and the Judgment of the High Court dated 03/03/2021 and the order of the Labour Tribunal dated 09/09/2016 are hereby set aside.

Judge of the Supreme Court

Yasantha Kodagoda PC, J.

I agree

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree

Judge of the Supreme Court